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Bartell Hotels, a California Limited Partnership,
dba Half Moon Anchorage

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BARTELL HOTELS, A California Limited
Partnership, dba HALF MOON ANCHORAGE,

Plaintiff,

v.

M/Y CLAIRE IRENE, a 1968 Owens Motor
Yacht of Approximately 40-Foot In Length And
11-Foot In Beam, Bearing California D.M.V.
Registration No. CF 8646 ED, AND ALL OF
HER ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*,

Defendant.

Civil No. 07 CV 2097 L (BLM)

IN ADMIRALTY

DECLARATION OF BRAD
OLIVER IN SUPPORT MOTION
FOR JUDGMENT BY COURT

F.R.C.P. Supplemental Admiralty
Rule E(9)

SUBMITTED ON PAPERS
(Oral Arguments Not Requested)

Date: June 16, 2008

Time: 10:30 a.m.

Judge: Hon. M. James Lorenz

I, Brad Oliver, declare under penalty of perjury under the laws of the United States
and the State of California as follows.

1. I am the Marina Manager of Half Moon Anchorage Marina, which is owned by
the PLAINTIFF in this action. I respectfully submit this Declaration in support of
PLAINTIFF's Motion for Judgment By Court. The matters stated herein are of my own
personal knowledge, except as to matters stated on information and belief, and, as to such
matters, I believe them to be true.

2. PLAINTIFF purchased the former owner's interest in Half Moon Anchorage
(hereinafter the "Marina") in January, 2007. Marina records I reviewed indicate that at that

1 time, the DEFENDANT VESSEL had already been at the marina for years, apparently since
2 at least 2001.

3 3. Based on my review of an accounting history relating to the DEFENDANT
4 VESSEL, I believe that since March, 2001, the account for the DEFENDANT VESSEL has
5 been in arrears on at least 15 occasions, and that on at least two occasions her owner tendered
6 checks that were returned for want of sufficient funds.

7 4. After it purchased the Marina, in order to control risk and liability and for other
8 business reasons, PLAINTIFF carefully reviewed the existing circumstances and procedures
9 at the Marina and decided to make certain improvements and changes. This included
10 examining the vessels at the Marina in order to generally evaluate their condition, verifying
11 that all vessels located at the Marina were insured, and preparing a new wharfage contract for
12 review and execution by vessel owners. It appeared, upon my examination, that the
13 DEFENDANT VESSEL was (as she still is) in demonstrably poor, unseaworthy condition,
14 exhibiting evidence of dry rot, years of growth on her bottom, blistering and peeling paint,
15 with debris scattered aboard. In fact, during the pendency of this action it became necessary
16 for PLAINTIFF to request an Order from this Honorable Court permitting it, in its capacity
17 as Substitute Custodian, to arrange for the dewatering of the DEFENDANT VESSEL and
18 disposal of contaminated water. The requested Order issued and the vessel was dewatered.

19 5. As part of our efforts to control risk, PLAINTIFF (by way of letter from me)
20 requested that all vessel owners for whom we did not have current evidence of vessel
21 insurance, provide such evidence. We also requested that vessel owners review and execute
22 a new wharfage contract. Although a few boat owners failed to provide the requested proof
23 of insurance or declined to execute the new wharfage contract and hence moved their vessels
24 to other locations, the vast majority of boat owners complied with these requests, did not
25 exercise their right to terminate their wharfage contracts, and they remain today at the Marina
26 as tenants in good standing. We also sent a letter to all vessel owners, including Mr. Hach
27 (owner of the DEFENDANT VESSEL), notifying them they were free to pick up a new

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1 Marina gate access card at the Marina Office. Mr. Hach never retrieved a new gate access
2 card at the Marina Office. Mr. Hach also never provided the requested proof of insurance.

3 6. In view of Mr. Hach's failure and refusal to pay wharfage arrearages, to provide
4 proof of required insurance, and to execute a new wharfage contract, our attorney mailed a
5 letter to Mr. Hach terminating the Wharfage Contract, effective September 21, 2008 (a copy
6 of counsel's letter is attached as Exh. B to the Decl. of Philip E. Weiss filed concurrently
7 herewith). On the date of termination of the Wharfage Contract (September 21, 2008), the
8 account for the DEFENDANT VESSEL stood in arrears in the amount \$1,929.60. Attached
9 hereto as Exhibit A is a true and correct copy of PLAINTIFF's Statement reflecting this sum
10 was due at the time the Wharfage Contract was terminated.

11 7. After this termination date PLAINTIFF began charging, consistent with its
12 usual and customary practices, to charge "transient vessels" (i.e., those without an existing
13 Wharfage Contract staying for a short period and interloping vessels) wharfage fees
14 calculated at the rate of \$1.50 per foot of vessel length per day, or \$60.00 per day for the
15 DEFENDANT VESSEL (i.e., 40 feet X \$1.50 = \$60). Based on years of experience as a
16 Marina Manager, both in my current position and with San Diego Yacht Club, I believe it is a
17 uniform practice in San Diego's marina industry to charge a transient rate calculated in the
18 above manner, although I am informed and believe that at least some other marinas charge a
19 rate higher than \$1.50 per foot per day. The DEFENDANT VESSEL was charged transient
20 wharfage fees for a period of 47 days (between September 21, 2007 when the Wharfage
21 Contract terminated and November 7, 2007, when the U.S. Marshal seized her pursuant to

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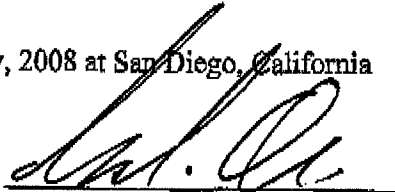
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1 Order of this Honorable Court) at the above detailed rate of \$60.00 per day, resulting in
2 transient fee arrearages at the time of the vessel arrest in the sum of \$2,820.00 (i.e., 47 days X
3 \$60/day). Attached hereto as Exhibit B is a true and correct copy of PLAINTIFF's Statement
4 reflecting transient fee arrearages for the DEFENDANT VESSEL in the amount of \$2,820.00.

5 If called to testify as to the foregoing matters, I could and would competently thereto
6 testify.

7 Executed this 16 day of May, 2008 at San Diego, California



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10 Brad Oliver
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A	Accounting Statement	A1
B	Accounting Statement	B1



STATEMENT

Date: May 14, 2008
STATEMENT # 08-003

Comments

REFERENCE: Kurt Hach, MV "Claire Irene", DMV CF 8646 ED, Slip A 35

This account became un-collectable and was removed from our accounting system. At the date of termination of the wharfage contract, the below amount was owed to the marina for berth fees.

[illegible]

Current	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due	Over 90 Days Past Due	Amount Due
					\$1929.60

Remittance

Statement #	08-003
Date	
Amount Due	\$1929.60
Amount Enclosed	

Make all checks payable to **Half Moon Anchorage**, Attn. Brad Oliver, Marina Manager

Thank you for your business!

Half Moon Anchorage, 2303 Shelter Island Drive, San Diego, CA 92106 Phone 619-224-3401



STATEMENT

Date: May 14, 2008
STATEMENT # 08-004

Comments

REFERENCE: Kurt Hach, MV "Claire Irene", DMV CF 8646 ED, Slip A 35

This account became un-collectable and was removed from our accounting system. Fees owed below are transient berth fees for the dates listed.

Date	Description	Balance	Amount
5-14-2008	Terminated tenant, amount owed for transient berth fees from Sept. 21, 2007 thru Nov. 7, 2007 (40' x \$1.50/ft x 47 days)		\$2820.00

Current	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due	Over 90 Days Past Due	Amount Due
					\$2820.00
Remittance					
Statement #		08-004			
Date					
Amount Due		\$2820.00			
Amount Enclosed					

Make all checks payable to **Half Moon Anchorage**, Attn. Brad Oliver, Marina Manager

Thank you for your business!

Half Moon Anchorage, 2303 Shelter Island Drive, San Diego, CA 92106 Phone 619-224-3401